

**PARKING LEASE AGREEMENT  
FOR PARKING IN THE CORCORAN STREET GARAGE BETWEEN**

**THE CITY OF DURHAM**

**AND**

**21C DURHAM LLC**

*Parking Lease Agreement for Parking in the Corcoran St. Garage  
between the City of Durham and 21c Durham LLC*

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*Parking Lease Agreement for Parking in the Corcoran St. Garage  
between the City of Durham and 21c Durham LLC*

**THIS AGREEMENT** (this “Lease”) is dated, made, and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2013 (“Effective Date”), by and between the **CITY OF DURHAM**, a North Carolina municipal corporation (“Landlord”), and **21C DURHAM LLC**, a limited liability corporation organized and existing under the laws of North Carolina (“Tenant”).

**WITNESSETH:**

**WHEREAS**, Landlord is owner of the Corcoran Street Garage, a public parking facility located at 101 S. Corcoran St. in the downtown area of the City of Durham;

**WHEREAS**, Landlord wishes to enter into this Lease to lease certain parking spaces in the Parking Facility to Tenant;

**WHEREAS**, the acceptance of this Lease for and on behalf of Landlord has been duly approved by the Durham City Council.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained in this Lease and for other good and valuable consideration, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.1      Defined Terms.** Capitalized terms used in this Lease shall have the following meanings:

(a)      “Commencement Date” – means the first day of the calendar month, beginning no sooner than July 1, 2014, and immediately following the date which the Tenant delivers to the Landlord both (i) a formal request that the Commencement Date be established, and (ii) sufficient evidence of the issuance of a Certificate of Compliance for the completed renovation work of the Hill Building Property in downtown Durham having parcel identification numbers 103044 and 103043, such that the Hill Building Property may be lawfully and beneficially occupied as a commercial hotel. The Commencement Date shall be confirmed by Landlord by written notice to Tenant in response to Tenant’s request.

(b)      “Leased Spaces” means 50 reserved parking spaces in the Parking Facility that are leased to Tenant pursuant to this Lease and assigned to a specific area of the Parking Facility.

(c)      “Parking Charges” means all rates, fees, charges, interest, penalties, and other amounts charged for or arising out of the use of the parking spaces in the Parking Facility.

(d)      “Parking Facility” means the public parking facility owned by the City of Durham located at 101 S. Corcoran St. in downtown Durham, assigned the tax parcel reference no. 103057, and commonly known as the Corcoran Street Garage.

(e)      “Public Spaces” means the parking spaces in the Parking Facility, other than the Leased Spaces, which Public Spaces are available to members of the general public on a first come, first served basis.

(f) “Rules and Regulations” means the rules and regulations established by Landlord governing use of the Parking Facility by Tenant and members of the general public as amended or modified from time to time by Landlord.

## **ARTICLE II**

### **GRANT OF RIGHTS**

**Section 2.1** **Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, during the Term, the Leased Spaces in accordance with this Lease, together with the right to use all driveways, aisles, elevators, stairways, lanes, sidewalks, entrances, curb cuts and other areas of the Parking Facility reasonably necessary or desirable for the use of the Leased Spaces and for pedestrian and vehicular ingress, egress, and regress to and from the Parking Facility. The term of this Lease shall begin on the Commencement Date, so long as the Commencement Date occurs on or before July 1, 2015, otherwise this Lease shall be null and void. The rights and obligations of the parties under this Lease shall not commence until the Commencement Date, including Tenant’s obligations hereunder to pay Rent. During the Term, Tenant shall, and may peacefully have, hold and enjoy the Leased Spaces and the other rights granted to Tenant hereunder, subject to the other terms of this Lease. The commitment from the City to lease these spaces will end upon the expiration of the Term.

### **Section 2.2** **Leased Spaces.**

(a) Tenant shall have exclusive use of and access to the Leased Spaces each day from 8:00 a.m. to 7:00 p.m. Monday through Friday (the “Exclusive Times”). Tenant may also have use of and access to the Leased Spaces outside the Exclusive Times; however, Tenant acknowledges that, currently, the Landlord neither operates, manages or enforces parking activities or restrictions in the Parking Facility outside of the Exclusive Times, nor does Landlord provide any security of the Parking Facility outside of the Exclusive Times. Tenant assumes any risk and all responsibility for use of the Parking Facility outside the Exclusive Times.

(b) Tenant shall have the right (without the consent of Landlord) to grant licenses (or parking permits or subleases, as applicable) to third parties for the use of the Leased Spaces during the Exclusive Times (hereinafter any such third party will be referred to as “Sublessee”); provided, however, that the terms of such grants shall not exceed the Basic Rent Tenant is required to pay to Landlord under this Lease and the number of licenses (or parking permits or subleases, as applicable) granted to Sublessees shall not exceed the number of Leased Spaces. This Lease gives Tenant rights that may be enjoyed by Tenant’s Sublessee, but Tenant’s Sublessees themselves do not have rights under this Lease against the Landlord, and Tenant’s Sublessees do not have the right to enforce any provisions of this Lease. Nothing in this Lease gives Tenant any rights with respect to the use of parking spaces other than the Leased Spaces; however, Tenant shall have the same rights as the general public to access and use the parking spaces other than the Leased Spaces both during and outside the Exclusive Times.

## **ARTICLE III**

### **TERM**

**Section 3.1** **Term.** The term of this Lease shall commence at 12:01 A.M. on the Commencement Date, defined in Section 2.1, and shall continue for 9 years and 9 months, ending at 11:59 P.M. on the day preceding the ninth year and nine month anniversary of the Commencement Date, unless earlier terminated in accordance with the terms of this Lease (the “Term”).

**Section 3.2      Renewal.** Intentionally Omitted.

**Section 3.3      Extension.** Intentionally Omitted.

#### **ARTICLE IV**

##### **RENT**

**Section 4.1      Rent.** Tenant covenants and agrees to pay to Landlord all of the following (all of which is collectively referred to as “Rent”).

(a) Monthly basic Rent (“Basic Rent”) in the amount fixed by the City of Durham at the time of establishment of the Commencement Date in accordance with Section 4.3 below for each Leased Space, to be paid in advance on the first day of each month during the Term for the upcoming month or portion thereof. The Landlord shall provide notice to Tenant of the Basic Rent amount with notice to Tenant of the Commencement Date; and,

(b) Additional rent (“Additional Rent”) in the amount of any payment whether or not referred to as such in any portion of this Lease that accrues while this Lease is in effect, which shall include any and all charges or other amounts that Tenant is obligated to pay Landlord under this Lease other than Basic Rent;

**Section 4.2      Adjustment of Basic Rent.** Landlord may change the Basic Rent at any time during the Term by giving Tenant no less than thirty (30) days prior written notice; provided, however, adjustments to the Basic Rent shall be subject to the provisions of Section 4.3 of this Lease. Notwithstanding anything to the contrary in this Lease, changes to the Basic Rent made pursuant to this Section shall not require a written amendment to this Lease and shall be deemed effective upon Tenant’s receipt of Landlord’s notice as required in this Section.

**Section 4.3      Parking Charges; Fair Market Value.** Landlord, in its sole discretion, shall from time to time fix the Parking Charges, including Basic Rent and Additional Rent, applicable to the Leased Spaces and the Public Spaces. In the exercise of this discretion, Landlord shall not discriminate against Tenant by establishing Parking Charges that are inconsistent with or different from the parking charges levied by Landlord for other structured parking facilities in the City of Durham that are owned or operated by Landlord, except as permitted by applicable law. If the City of Durham ever sells the Parking Facility and ceases to be the Landlord hereunder, then during the time period that the City of Durham is not the owner of the Parking Facility, the Parking Charges established, from time to time, by Landlord shall at all times be equal to the Fair Market Value. For the purpose of this Agreement, “Fair Market Value” shall be the monthly rent that a willing user would pay and a willing operator or owner would accept in an arm’s length, bona fide negotiation for a monthly parking license, lease, or permit in downtown Durham.

**Section 4.4      Economic Incentive.** Intentionally Omitted.

**Section 4.5      Payment of Rent.**

(a) Tenant shall pay the Basic Rent promptly when due, in cash or by check, in lawful money of the United States of America on the first day of each month during the Term, without notice or demand, payable to Landlord and delivered to its offices at the address as stated in this Lease or to such

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other person and place as may be designated by written notice from Landlord to Tenant from time to time. Tenant shall pay Late Charges that accrue under Section 4.6 with a payment that is submitted late. Tenant shall pay all other Additional Rent in the same manner as Basic Rent on the first day of the first full month after receipt of written notice from Landlord of the nature and the amount of Additional Rent that is due. The amount paid by Tenant shall be without deduction, diminution, abatement, counterclaim, or set-off of any amount or for any reason whatsoever, except as permitted by the terms of this Lease. If Tenant presents to Landlord more than twice during the Term checks or drafts not honored by the institution upon which they are issued, then Landlord may require that future payments of Rent and other sums thereafter payable be made by certified or cashier's check.

(b) If the Commencement Date is other than the first day of a calendar month or if this Lease terminates on other than the last day of a calendar month, then the Rent for such month or months shall be prorated and paid in advance. The payment for such prorated month shall be calculated by multiplying the Rent for such month by a fraction, the numerator of which shall be the number of days of the Term occurring during said commencement or termination month, as the case may be, and the denominator of which shall be 30.

**Section 4.6**     **Late Charges.** Other remedies for non-payment of Rent notwithstanding, any Rent that is not paid within 10 days after the due date shall accrue interest at the rate of two percent (2%) higher than the rate announced by Bank of America (or its successor) from time to time as its prime rate (but in no event higher than the maximum rate allowed by law), until paid in full, which interest shall be deemed Additional Rent. If there is no prime rate announced by Bank of America or its successor that can reasonably be used to derive the interest rate for purpose of this Section, then the interest rate on said late installments shall be ten percent (10%) per year but not exceeding the maximum rate allowed by law.

**Section 4.7**     **No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or letter accompanying any payment as Rent be deemed an accord and satisfaction. Landlord may accept such payment without prejudice to Landlord's right to recover the balance of Rent due or to pursue any other rent provided in this Lease.

**ARTICLE V**

**ACCOUNTING**

**Section 5.1**     **Accounting of Leased Spaces.** Intentionally Omitted.

**Section 5.2**     **Books and Records.** Intentionally Omitted.

**ARTICLE VI**

**LANDLORD'S COVENANTS**

**Section 6.1**     **Repairs and Maintenance.** Landlord shall maintain the Parking Facility in good order and repair during the Term. If damage to the Parking Facility is caused by the act or neglect of Tenant, its agents, employees, or contractors (but not invitees (other than agents, employees, or contractors), licensees or sublessees of Tenant), then Tenant shall, at Landlord's option, repair such damage at Tenant's expense or pay Landlord the reasonable cost of repairing the damage. Landlord agrees that customary use of a parking space and the wear and tear resulting therefrom shall not give rise to any obligation on Tenant's behalf to repair or maintain the Parking Facility or any of the Leased Spaces.

**Section 6.2      Services.** During the Exclusive Times, Landlord shall operate the Parking Facility or cause the Parking Facility to be operated in an efficient and proper businesslike manner consistent with industry standards for the operation of comparable parking facilities in the Raleigh-Durham area that are operated as monthly and/or hourly parking facilities.

**Section 6.3      Right of Access; Duty to Provide Substitute Parking.**

(a) Landlord may enter the Parking Facility at any time during the Term to perform Landlord's obligations under this Lease, to repair and maintain the Parking Facility and Leased Spaces, to exercise Landlord's rights under this Lease, and to enforce Tenant's obligations under this Lease. In addition to the rights of Landlord specified in this Section 6.3, Landlord shall also have the right to close Leased Spaces on a temporary basis in order to accommodate improvements to the Parking Facility, provided, that if Landlord closes any Leased Spaces (temporarily) as is permitted under this Section 6.3, then Landlord shall be obligated to provide an equal number of replacement spaces reasonably near the Parking Facility subject to availability.

(b) If Landlord requires the closure of any portion of the Parking Facility on a temporary basis in order to perform its obligations under this Lease or to repair and maintain the Parking Facility or to exercise its rights under subsection (a) above, so that Tenant is unable to use, in a commercially reasonable manner, the leasehold interest granted to Tenant by Section 2.1 of this Lease, Landlord shall (i) provide Tenant with as much prior notice as is practical under the circumstances, but, except in case of emergency, at least 48 hours, (ii) use commercially reasonable efforts to complete its work as expeditiously as reasonably possible and to restore Tenant's use of the Parking Facility and Leased Spaces, and (iii) make available to Tenant substitute parking spaces in the Parking Facility to the extent substitute parking spaces are not committed to others at the time, or, if such spaces are not available, then Landlord will use all reasonable efforts to provide substitute spaces in an alternate location, in structured parking facilities or on surface lots, reasonably near the Parking Facility (any such substitute or alternate space shall hereinafter be called a "Substitute Space"). To the extent any such Leased Spaces are closed for the reasons described in this Section 6.3(b), then Rent shall abate with respect to any such Leased Space; provided, however, that to the extent Landlord provides Tenant with Substitute Spaces, then Rent shall not abate. This Section 6.3(b) does not apply to closure resulting from damage caused by fire or other casualty.

**Section 6.4      Covenants Not Covenants of Officials Individually.** No covenant, stipulation, obligation, or agreement by Landlord contained in this Lease shall be deemed to be a covenant, stipulation, obligation, agreement, or personal liability of any present or future officer, official, agent, or employee of Landlord in such person's individual capacity.

## **ARTICLE VII**

### **TENANT'S COVENANTS**

**Section 7.1      Claims and Demands.** Tenant shall notify Landlord of any claim, demand, or charge asserted or proposed to be asserted against or upon the Parking Facility or Leased Spaces within 5 days of receiving notice thereof.

**Section 7.2      Compliance with Laws and Contracts.** Tenant shall comply with all applicable federal, State, and local statutes, regulations, ordinances, orders, permits, licenses, and requirements, as



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they may be amended, changed, or adopted from time to time, relating to Tenant's duties and obligations under this Lease. Tenant shall comply with the Rules and Regulations.

**Section 7.3      Alterations.** Tenant shall not make any alteration, additions, or other improvement in or to the Parking Facility or Leased Spaces or install equipment of any kind in the Parking Facility without Landlord's prior written consent. Any such alterations, additions, or other improvements that are approved by Landlord shall become fixtures to the Parking Facility and the property of Landlord immediately upon their installation or attachment to the Parking Facility.

**Section 7.4      Subordination.**

(a) This Lease shall be subject and subordinate at all times to the lien of any deed of trust or other encumbrance(s) that may now or at any time be made upon the Parking Facility or Landlord's interest in the Parking Facility. Tenant shall execute and deliver any instrument(s) required in connection with subordinating this Lease to the lien of any such deed of trust or other encumbrance(s) as shall be desired by any party secured thereby. If Landlord's interest under this Lease is transferred by reason of foreclosure or other enforcement proceedings, Tenant shall be bound to the transferee under the terms, covenants and conditions of this Lease for the remainder of the Term and agrees to attorn to the transferee.

(b) So long as no Event of Default has occurred, this Lease shall remain in full force and effect for the full Term hereof, and Tenant's occupancy of and rights to use the Leased Spaces shall not be disturbed by termination of ground lease, by foreclosure or any such mortgage, deed of trust, or by any foreclosure proceeding or any deed in lieu of foreclosure or other such transfer, and the subordination set forth in Section 7.4(a) is made subject to Tenant's non-disturbance rights under this Section 7.4(b). If required by Tenant's lender, Landlord shall cause its mortgagee and/or ground lessor to execute and deliver a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to all parties, as soon as reasonably possible after the execution hereof. Tenant shall be required to execute such non-disturbance and attornment agreement in order for this Section 7.4(b) to be effective.

**Section 7.5      Estoppel Certificate.**

(a) Tenant shall, without charge, at any time and from time to time, within twenty (20) days after request by Landlord or Landlord's mortgagee, certify by written instrument, duly executed, acknowledged and delivered, addressed to Landlord or any party designated by Landlord, that (i) this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the rent and other charges have been paid, (ii) the date of expiration of the Term, (iii) the Rent then payable under this Lease, (iv) whether or not, to the best knowledge of the officer executing such certificate on behalf of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the person executing such certificate may have knowledge, and (v) any other matter reasonably requested by Landlord.

(b) Landlord shall, without charge, at any time and from time to time, within twenty (20) days after request by Tenant or Tenant's mortgagee, certify by written instrument, duly executed, acknowledged and delivered, addressed to Tenant or any party designated by Tenant, that (i) this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the rent and other charges have been paid, (ii) the date of expiration of the Term, (iii) the Rent then payable under this Lease, (iv) whether or not, to the best knowledge of the officer executing such certificate on behalf of

Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the person executing such certificate may have knowledge, and (v) any other matter reasonably requested by Tenant.

**Section 7.6      Surrender of Possession; Holding Over.** Upon the expiration or earlier termination of the Term, Tenant shall surrender the Leased Spaces and all gate cards, parking passes, and security cards to Landlord in good order and repair, ordinary wear and tear excepted. If Tenant does not surrender possession of the Leased Spaces at the expiration or earlier termination of the Term, Landlord shall be entitled to recover compensation for such use and occupancy at one hundred fifty percent (150%) of the Basic Rent payable prior to the expiration or earlier termination of the Term, and Tenant shall be liable to Landlord for any loss or damage it may sustain by reason of Tenant's failure to surrender possession of the Leased Spaces immediately upon the expiration or earlier termination of the Term.

**Section 7.7      Additional Covenants.** Tenant covenants and agrees: (i) that its use of the Parking Facility, including the Leased Spaces and all other parking spaces in the Parking Facility used by Tenant, its licensees and sublessees, will not constitute a nuisance and will not interfere, in any material and adverse manner, with the use of the Parking Facility by Landlord, its licensees and sublessees, (ii) to use the Leased Spaces only for the parking of automobiles, passenger trucks, delivery vans, and other private vehicles; (iii) not to strip, damage, or deface the Parking Facility or store vehicles or equipment in the Parking Facility; (iv) not to use the Parking Facility in any manner that is unlawful, noisy, offensive, or injurious to any person or property and shall prohibit such use in all licenses or subleases of any Leased Space; (v) not to place upon the interior or exterior of the Parking Facility any placard, sign, lettering, or covering, except for any such signage Landlord has approved (subject to Section 7.3); and (vi) not to cause in the Parking Facility the generation, treatment, storage, or disposal of any hazardous substances or materials or toxic substances of any kind as described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.), any regulations adopted under these acts, or all other applicable federal, State, and local statutes, regulations, ordinances, orders, permits, licenses, and requirements, as they may be amended, changed, or adopted from time to time, concerning environmental protection.

## **ARTICLE VIII**

### **INDEMNIFICATION**

**Section 8.1      Tenant General Indemnity.** Tenant shall indemnify and save harmless Landlord against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including, without limitation, reasonable attorneys' fees and disbursements, that may be imposed upon or reasonably incurred by, Landlord or any agency or subdivision thereof or its respective agents, employees, officers, or officials, (the "Indemnitees") by reason of the acts or omissions of Tenant in the performance of each of their obligations under this Lease or by reason of the acts or omissions of Sublessees as defined in Section 2.2(b) above, except to the extent that such liability or other loss is caused proximately, in whole or in part, by the negligent or willful acts of Indemnitees. Tenant shall defend any and all legal proceedings commenced against any Indemnitee arising under Tenant's obligations under this Section 8.1 using legal counsel satisfactory to Landlord. Landlord shall use its best efforts to give Tenant reasonable notice of any legal proceeding of which it has actual knowledge. Tenant shall deliver to Landlord copies of documents served in any legal proceeding arising in connection with the Parking Facility and, whenever requested by Landlord, shall advise Landlord as to the status of such legal proceeding; provided, however, that any such consultation shall not cause Tenant to waive any claim of privilege, including, without limitation, attorney-client privilege. If Tenant fails to defend any such legal proceeding, Landlord shall have the right (but not the obligation) to defend the proceeding at

Tenant's expense. Tenant shall not settle any such legal proceeding without Landlord's prior written consent unless the effect of such settlement shall be to release all Indemnitees from all liability with respect to such legal proceeding (and all claims and liabilities asserted therein). For purposes of this Article, "legal proceedings" includes legal actions and administrative proceedings.

**Section 8.2      Other Tenant Indemnity.** Tenant shall indemnify and save harmless Landlord against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including, without limitation, reasonable attorneys' fees and disbursements, that may be imposed upon or reasonably incurred by, Landlord or any agency or subdivision thereof or its respective agents, employees, officers, or officials, (the "Indemnitees") if for any reason the scope of authority of the Landlord, as it relates to the grant of the Term of this lease, is challenged through a legal proceeding or threat of legal proceeding. Tenant shall defend any and all legal proceedings commenced against any Indemnitee arising under Tenant's obligations under this Section 8.2 using legal counsel satisfactory to Landlord. Landlord shall use its best efforts to give Tenant reasonable notice of any legal proceeding of which it has actual knowledge. Tenant shall deliver to Landlord copies of documents served in any legal proceeding arising in connection with such scope of authority challenge and, whenever requested by Landlord, shall advise Landlord as to the status of such legal proceeding; provided, however, that any such consultation shall not cause Tenant to waive any claim of privilege, including, without limitation, attorney-client privilege. If Tenant fails to defend any such legal proceeding, Landlord shall have the right (but not the obligation) to defend the proceeding at Tenant's expense. Tenant shall not settle any such legal proceeding without Landlord's prior written consent unless the effect of such settlement shall be to release all Indemnites from all liability with respect to such legal proceeding (and all claims and liabilities asserted therein).

## **ARTICLE IX**

### **INSURANCE**

**Section 9.1      Insurance.** Tenant shall maintain insurance not less than the following:

**Commercial General Liability**, covering

- Broad form general liability coverage, including XCU hazards and contractual liability
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$1,000,000 per occurrence

**Automobile Liability Insurance**, covering

- Owned, hired, or borrowed vehicles
- Employee vehicles, if used in the conduct of tenant's business
- Combined single limit not less than \$1,000,000 per occurrence

**Insurance shall be provided by:**

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A or better

**Insurance shall be evidenced by a certificate:**

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:  
City of Durham, North Carolina

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Attention: Finance Director  
101 City Hall Plaza  
Durham, NC 27701

- Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before tenant may occupy the leased parking space.

**ARTICLE X**

**DEFAULT AND REMEDIES**

**Section 10.1     Tenant's Default.** The following shall be deemed defaults by Tenant under this Lease:

- (a) Tenant's failure to pay Rent or make any other payment under this Lease when it becomes due;
- (b) The failure or refusal of Tenant to perform fully and promptly any act, covenant, or obligation required under this Lease or to comply otherwise with any provision of this Lease;
- (c) If Tenant's leasehold estate is taken by execution or other process of law;
- (d) The entry of an order of relief for Tenant by a court of competent jurisdiction under any bankruptcy or insolvency laws;
- (e) The entry of an order of appointment by any court or under any law of a receiver, trustee or other custodian of the property, assets or business of Tenant;
- (f) The assignment by Tenant of all or any part of its property or assets for the benefit of creditors other than its stock or other equity interest in an unregulated subsidiary or joint venture; or
- (g) The levy of execution, attachment, or other taking of property (other than Tenant's stock or other equity interest in an unregulated subsidiary or joint venture), assets, or interest under this Lease of Tenant by process of law or otherwise in satisfaction of any judgment, debt, or claim, unless postponed by appeal, furnishing of bond, or other contest by Tenant as permitted by law.

**Section 10.2     Tenant's Opportunity to Cure.** Upon the occurrence of an event of default contained in Section 10.1(a) above, if Landlord shall provide to Tenant written notice of such default, Tenant shall have 15 days from the date that Tenant receives the notice to cure the default; provided, however, that Landlord shall not be obligated to provide Tenant with a notice of a default under Section 10.1(a) more frequently than 2 times in any twelve month period. Upon the occurrence of an event of default contained in Section 10.1(b) above, if Landlord shall provide to Tenant written notice of such default, Tenant shall have 30 days to cure such default from the date that Tenant receives the notice to cure such default. If the nature of the event of default under Section 10.1(b) (which shall in no event be the payment of money) is such that Tenant reasonably cannot cure the default within the cure period, then Tenant shall have an additional reasonable amount of time to cure the event of default provided that Tenant has begun its efforts to cure the event of default within the cure period and Tenant continues its efforts to cure the event of default in a commercially reasonable manner. Upon the occurrence of the events described in Section 10.1(c), (d), (e), (f), or (g) or upon the failure by Tenant to cure the defaults in

Section 10.1 (a) or (b) within the time periods described in this Section 10.2, an event of default shall occur (hereinafter an “Event of Default”).

**Section 10.3     Landlord’s Remedies.** This Lease shall be enforceable by actions for specific performance or injunction in addition to any other remedies available at law or in equity, including recovery of all attorneys’ fees and court costs. If an Event of Default has occurred, then, Landlord may, without further notice or demand, terminate this Lease, and Tenant immediately shall surrender the Leased Spaces to Landlord; and, if Tenant fails to do so, Landlord shall have the right, without waiving any other remedy for possession or arrears in payments, to enter upon and take control of the Leased Spaces and to expel or remove Tenant and any other person who may be occupying the Leased Spaces. Pursuit of any remedy available in law or at equity, shall not preclude the pursuit of any other remedy provided for in this Lease or any other remedy provided in law or equity, nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any amounts due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, and covenants contained in this Lease. In the event of any early termination of this Lease by Landlord, Tenant shall remain liable for the Rent to the date of such termination.

**Section 10.4     Re-letting Leased Spaces.** If Landlord reenters or retakes the Leased Spaces, all rents received by Landlord for re-letting the Leased Spaces after Tenant’s default shall be applied first to the payment of such expenses as Landlord may have incurred in recovering possession of and re-letting the Leased Spaces (including brokerage fees) and second to the payment of any costs and expenses incurred by Landlord, either for making the necessary repairs to the Leased Spaces or in curing any default on the part of Tenant of any covenant or condition under this Lease. Any remaining rent shall be applied toward the payment of Rent due from Tenant, and Tenant expressly agrees to pay any deficiency then remaining. Landlord shall in no event be liable (nor shall Tenant be entitled to any set off) for Landlord’s failure to re-let the Leased Spaces, and Landlord, at its option, may refrain from terminating Tenant’s right of possession, and in such case may enforce the provisions of this Lease against Tenant for the full Term.

**Section 10.5     Landlord’s Default.** Landlord shall be in default of its obligations under the Lease if Landlord fails to perform any of its obligations under this Lease.

**Section 10.6     Landlord’s Opportunity to Cure.** Upon the occurrence of an event of default by Landlord contained in Section 10.5, Landlord shall have thirty (30) days to cure such default from the date it receives notice from Tenant of the event of default. If the nature of the event of default is such that Landlord reasonably cannot cure the default within that thirty (30) day period, then Landlord shall have an additional reasonable amount of time to cure the event of default provided that Landlord has begun its efforts to cure the event of default within that thirty (30) day period and Landlord continues its efforts to cure the event of default in a commercially reasonable manner. If Landlord fails to cure the default in the time provided in this Section 10.6 such failure shall constitute an event of default (a “Landlord Default”).

**Section 10.7     Tenant’s Remedies.**

(a) Upon the occurrence and during the continuance of any event of default by Landlord, but only after the 30-day notice referred to in Section 10.6 and only if Landlord has not cured the event of default within the applicable cure period, Tenant shall have the right to pursue any remedy available at law or equity including the right to terminate this Lease. In case of such termination, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. Before exercising its right pursuant to this Section 10.7 to terminate this Lease, Tenant shall give Landlord five (5) days’ notice of its intention,

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which notice shall distinctly state the events of default upon which Tenant relies, and Tenant's right to terminate shall cease if Landlord cures the events of default contained in the notice. If Landlord is liable for breaching its obligation to provide parking spaces as required under this Lease, Landlord shall not be liable for more than an amount equal to the Basic Rent in effect at the time of the breach for the parking spaces that Landlord was required to supply less the Additional Rent and other appropriate offsets, if any.

(b) In addition to any right or remedy provided in this Lease, during any time that Tenant loses the right to use any or all of the Leased Spaces, for any reason not caused by Tenant's failure to comply with this Lease or Tenant's negligence or willful misconduct, Tenant shall be entitled to reduce or abate the amount of Rent it is obligated to pay to Landlord on a pro rata basis. Tenant's right to reduce or abate its payment of Rent shall terminate immediately to the extent Tenant's right to use the Leased Spaces is restored.

(c) Notwithstanding anything to the contrary in this Lease, Tenant shall look only to Landlord's ownership in the Parking Facility for satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of a default by Landlord under this Lease. No other property or assets of Landlord, disclosed or undisclosed, shall be subject to levy, execution, or the enforcement procedure for the satisfaction of Tenant's remedies. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Landlord or its officers, officials, or their respective heirs, legal representatives, successors, and assigns on account of this Lease or any covenant, undertaking, or agreement in this Lease. Any limitation on the liability of Landlord contained in this Lease shall not apply to claims by Tenant resulting from (i) Landlord's failure to carry the insurance required under this Lease; (ii) Landlord's misappropriation or misapplication of insurance or condemnation proceeds; or (iii) Landlord's fraud. Furthermore, (i) no provision in this Lease limiting the liability of Landlord shall limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or any other action not involving the personal liability of Landlord or its officers, officials, or their respective heirs, legal representatives, successors, and assigns and (ii) the interest of Landlord in the Parking Facility or Landlord's ownership of the Parking Facility shall include the proceeds of the sale of the Parking Facility.

**Section 10.8     Punitive, Consequential, or Special Damages.** Notwithstanding anything contained in this Lease to the contrary, in no event shall either Landlord or Tenant or any Person claiming through Landlord or Tenant be entitled to any special, consequential or punitive damages pursuant to or as a result of any breach of or default under this Lease by the other party.

**Section 10.9     Force Majeure.** If Landlord shall be delayed, hindered, or prevented from performing any act required to be performed under this Lease by reason of fire, accident, casualty, act of God, strikes, lockouts, unavailability of materials, failure of power, laws or regulations, orders of a court or governmental agency, riot, insurrection, an act or failure to act of any tenant or subtenant of parking spaces, adverse weather conditions, war, or any reason beyond Landlord's reasonable control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay, provided that Landlord has taken steps that are reasonable under the circumstances to mitigate the effects of such force majeure.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1     Taking.**

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(a) In the event that the Parking Facility, or any part thereof, or access thereto, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement (such as deed in lieu of an eminent domain action) between Landlord and those authorized to exercise such right (any such matters being hereinafter referred to as a “taking”), Tenant shall be deemed to have assigned to Landlord, immediately before the taking, Tenant’s rights, if any, to participate in any such condemnation proceedings.

(b) If at any time during the Term of this Lease there shall be a taking of the whole or substantially all of the Parking Facility, this Lease shall terminate and expire immediately before the taking and the Rent shall be apportioned and paid to the date of such taking. For the purposes of this Article “substantially all of the Parking Facility” shall be deemed to have been taken if as a result of the taking, Tenant is unable to use for its intended purpose, in a commercially reasonable manner, any portion of the Parking Facility that Tenant has a right to use under this Lease.

(c) If this Lease shall continue after any such taking, this Lease shall remain unaffected except that the Basic Rent shall be reduced proportionately in accordance with the number of Leased Spaces taken or which Tenant does not have use of in accordance with this Lease. If the Parking Facility is only partially usable after any such taking, then the Landlord shall have the authority to reallocate parking spaces throughout the Facility, and to determine which parking spaces in the Facility will be available for those purposes.

**Section 11.2    Assignment.**

(a) The rights of Tenant under this Section 11.2 are in addition to Tenant’s rights under Section 2.2 of this Lease and shall not in any way restrict or limit Tenant’s rights under Section 2.2 of this Lease.

(b) Except as permitted in this Section, Tenant shall not assign this Lease or any portion thereof or any benefit accruing under this Lease to any party without first obtaining the prior written consent of Landlord. Tenant may assign this Lease or any portion thereof or any benefit accruing under this Lease to any party who is not a Prohibited Person without first obtaining the prior written consent of Landlord, provided that no such assignment shall relieve Tenant of its duties or obligations, including indemnity obligations, arising out of or pursuant to this Lease. In the event (i) Landlord consents (in the exercise of its sole and absolute discretion) to an assignment of this Lease by executing an instrument other than this Lease, and (ii) Tenant assigns all or part of this Lease to a permitted assignee who is not a Prohibited Person, and (iii) the assignee expressly assumes in writing (by an instrument in form and substance reasonably satisfactory to Landlord) all of the obligations under this Lease accruing after the date of assignment, Tenant shall be relieved of any further liability hereunder for obligations accruing after the date of assumption. Notwithstanding the foregoing provisions of this Section 11.2, Tenant shall be permitted to assign all or a portion of this Lease to an entity that is wholly owned or controlled by Tenant, provided that Tenant must first provide to Landlord an instrument in form and substance reasonably satisfactory to Landlord under which the assignee expressly assumes in writing all obligations and provisions of this Lease assigned to such entity. Notwithstanding the foregoing provisions of this Section 11.2, Tenant shall have the right, without the consent of Landlord, to delegate its duties and responsibilities to a third party provided that no such delegation results in Tenant being released from its obligations under this Lease. Any unauthorized assignment of this Lease shall be null and void and shall constitute a default under this Lease.

(c) “Prohibited Person” shall mean any of the following:

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(i) Any Person (A) that is in default or in breach of its obligations under any written agreement (including, but not limited to, any ground lease, any loan agreement or mortgage, or regulatory agreement) with Landlord, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach of its obligations under any written agreement with Landlord, unless this default or breach has been waived in writing by Landlord.

(ii) Any Person (A) that has been convicted in a criminal proceeding of a felony for any crime involving moral turpitude or that is an organized crime figure or is reputed (as determined according to the criteria specified in the next paragraph) to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding of a felony for any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a Person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Landlord.

(iii) Any “enemy” or “ally of enemy” with which trading is prohibited by the Trading with the Enemy Act, codified at 50 USCS Appendix Section 3, as amended.

**Section 11.3    No Warranty.** Except as provided in Section 6.1, Tenant accepts the Leased Spaces from Landlord “As Is.” TENANT AND LANDLORD EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE.

**Section 11.4    Survival.** It is understood and agreed that whether or not specifically provided herein, any provision of this Lease that by its nature and effect is required to be kept, observed, or performed after the expiration or early termination of this Lease shall survive the expiration or early termination of this Lease and shall remain binding upon and for the benefit of the parties until fully observed, kept, or performed.

**Section 11.5    Notices.** All notices, demands, and requests required or permitted under the provisions of this Lease shall, unless otherwise specified, be in writing, sent to the following addresses or to such other address as the party to whom the notice is sent shall have designated in writing in accordance with the provisions of this Section:

<u>As to Landlord:</u>	Mr. Thomas J. Bonfield, City Manager City of Durham 101 City Hall Plaza Durham, North Carolina 27701 Facsimile: 919-560-4949
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In addition, notices of pending or threatened litigation involving Landlord and notices of alleged defaults by Landlord under this Lease shall also be sent to:

Patrick Baker, City Attorney



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City of Durham  
101 City Hall Plaza  
Durham, North Carolina 27701  
Facsimile: 919-560-4660

In addition, notices sent pursuant to Section 7.1 (“Claims and Demands”), Article IX (“Insurance”), or Section 10.6 (“Landlord’s Opportunity to Cure”) shall also be sent to:

Director of Transportation  
City of Durham  
101 City Hall Plaza  
Durham, North Carolina 27701  
Facsimile: 919-4561

In addition, if Landlord requests Tenant to do so, then notices to Landlord under Sections 7.1 shall also be sent to Landlord’s Parking Manager at the address provided to Tenant by Landlord.

As to Tenant: 21c Durham LLC  
c/o 21c Museum Hotels LLC  
710 West Main Street, Third Floor  
Louisville, KY 40202  
Attn: General Counsel

Notices, demands, or requests delivered pursuant to this Section shall be deemed to have been properly given and provided if delivered by one of the following methods: (i) hand delivery, (ii) delivered by express, registered, or certified mail of the United States Postal Service, return receipt requested, postage prepaid, (iii) delivered by United Parcel Service or Federal Express or (iv) by facsimile transmission with a copy delivered by one of the options contained in (i) through (iii). Each such notice, demand, or request shall be deemed to have been received upon the earlier of (w) the actual receipt (including receipt by fax for which there is a confirmation), (x) refusal by the addressee, (y) three (3) business days after deposit in the custody of the United States Postal Service or (z) the next business day after deposit with the courier if sent pursuant to (iii) but only if next day delivery is selected. A party shall give the other party notice of any change in address, which notice shall not be effective until five (5) days after it is given. If an address is no longer valid so that a notice is not delivered when sent by a method described above, but the party has not given notice of the new address, then that notice sent to that address is deemed delivered by that method three (3) days after it is given.

**Section 11.6** **Successors.** This Lease shall be binding upon and inure to the benefit of each of the parties hereto and its respective successors and assigns.

**Section 11.7** **Severability.** If any term, condition or provision of this Lease is unenforceable, the remainder of this Lease shall be enforceable to the extent permitted by law.

**Section 11.8** **Execution in Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**Section 11.9** **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Lease shall be the North Carolina General Court of Justice in Durham County. Such actions shall not

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be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

**Section 11.10    Non-Waiver.** No delay or omission by Landlord to exercise any right or remedy accruing under this Lease shall impair such right or remedy or be construed to be a waiver thereof, nor shall any such delay or omission constitute approval of or acquiescence in a breach under this Lease by Tenant.

**Section 11.11    Entire Agreement; Memo of Lease.**

(a)     This Lease constitutes the entire agreement between the parties, and all prior or contemporaneous oral or written agreements or instruments are merged in this Lease.

(b)     At the request of either Landlord or Tenant, the other party shall execute and deliver to the other party a Memorandum of Lease, in recordable form and in form and substance reasonably satisfactory to all parties and meeting the statutory requirements for a Memorandum of Lease under North Carolina law.

**Section 11.12    Performance of Government Functions.** Nothing contained in this Lease shall be deemed or construed to estop, limit, or impair Landlord from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

**Section 11.13    Landlord Policy.** THE CITY OF DURHAM OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CONTRACTS.

**Section 11.14    No Partnership.** Nothing contained in this Lease shall be construed to create or form a partnership or joint-venture between the parties or render either party liable for the debts or obligations of the other.

**Section 11.15    No Third Party Rights Created.** This Lease is intended for the benefit of Landlord and Tenant and not any other person.

**Section 11.16    Modifications.** A modification of this Lease is not valid unless signed by both parties and otherwise in accordance with requirements of law.

**Section 11.17    Leasehold Mortgage Provisions.** [INTENTIONALLY OMITTED]

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed under seal as of the day and year first above written.

**LANDLORD:**

CITY OF DURHAM

ATTEST:

*Parking Lease Agreement for Parking in the Corcoran St. Garage  
between the City of Durham and 21c Durham LLC*

\_\_\_\_\_ By: \_\_\_\_\_

Preaudit Certificate, if necessary:

**TENANT:**

21C DURHAM LLC

By: \_\_\_\_\_

Title of officer: \_\_\_\_\_

(Affix corporate seal.)

State of \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ personally appeared before me this day and stated that he or she is (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of 21C DURHAM LLC, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public